



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 20, 1992

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-210

Dear Mr. Peck:

On March 12, 1992, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 15281.

You have received a request for information relating to the Director's Review Committee (the "committee"), the Mail System Coordinators Panel (the "panel"), and to a certain determination made by the committee regarding the availability of certain information to an inmate of the Texas Department of Criminal Justice (the "department"). Specifically, the requestor seeks:

[1] The names and job titles of all members of the Director's Review Committee which denied the following publications:

- 1) "ABRASAX" Autumn Equinox 1989, Vol. 2, No. 1
- 2) "ABRASAX" Spring Equinox 1991, Vol. 3, No. 3
- 3) "ABRASAX" Summer Solstice 1991, Vol. 3, No. 4
- 4) "Philosophers Stone", July '91
- 5) "ABRASAX" Winter Solstice 1991, Vol. 4 No. 2;

[2] The voting record of each member on the publications referred to in [paragraph] 1;

[3] All documents pertaining to, and otherwise related to, the investigation, evaluation, and determination of those publications referred to in [paragraph] 1, including, but not limited to copies of the pages determined to be contraband, evidence or materials relied upon in making such determination, and any other items or opinions relied upon in the determination, as held by the Director's Review Committee;

[4] The names, job titles, dates of employment, and job descriptions of the members of the Mail System Coordinators Panel responsible for those TDCJID Units located in the Northern Region, between the dates of May 20, 1990 and February 18, 1992; and,

[5] The specific Agency guidelines regarding the handling, copying (including costs), and appeals of information requested pursuant to the Open Records Act.

You claim that those portions of the publications denied the inmate by the panel and the committee are excepted from required public disclosure by section 3(a)(8) of the Open Records Act. You also claim that the voting record of the committee is excepted from required public disclosure by section 3(a)(11). As you do not address the remainder of the requested information, we presume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

Section 3(a)(8) excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986), citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); see also Open Records Decision

No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

You have submitted to us for review portions of the publications which the panel and the committee withheld from the inmate. You advise us that release of this information would undermine prison security. We agree. Because release of this contraband material would undermine a legitimate interest of law enforcement, we conclude that it may be withheld in its entirety from required public disclosure under section 3(a)(8) of the Open Records Act.

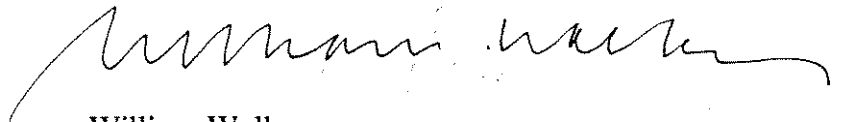
Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

You have submitted to us for review representative samples of the voting records of committee members. We agree that their release would reveal the recommendations of individual board members made prior to the ultimate determinations of the board. Accordingly, the voting records of committee members may be withheld from required public disclosure under section 3(a)(11) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-210.

Yours very truly,

A handwritten signature in black ink, appearing to read 'William Walker', written in a cursive style.

William Walker
Assistant Attorney General
Opinion Committee

WW/GK/mc

Ref.: ID# 15281
ID# 15505
ID# 15646

cc: Mr. Wesley M. Hinds
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